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DAVID R HALVORSON
BLAKELY SOKOLOFF TAYLOR & ZAFMAN
12400 WILSHIRE BOULEVARD 7TH FLOOR
LOS ANGELES, CA 90025

[REDACTED] EXAMINER

GHEBRETINSAE, TEMESGHEN

[REDACTED] ART UNIT [REDACTED] PAPER NUMBER

2631

18

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Please find below and/or attached an Office communication concerning this application or proceeding.

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Paper No. 18

MAILED

Application Number: 09/002.747

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Technology Center 2600

Appellant(s): David Horne

Kenneth M. Seddon

For Appellant

EXAMINER'S ANSWER

Art Unit: 2631

This is in response to the appeal brief filed 8/16/01.

(1) *Real Party in Interest*

A statement identifying the real party in interest is contained in the brief.

(2) *Related Appeals and Interferences*

The brief does not contain a statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief. Therefore, it is presumed that there are none. The Board, however, may exercise its discretion to require an explicit statement as to the existence of any related appeals and interferences.

(3) *Status of Claims*

The statement of the status of the claims contained in the brief is correct.

(4) *Status of Amendments After Final*

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

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(5) Summary of Invention

The summary of invention contained in the brief is correct.

(6) Issues

The appellant's statement of the issues in the brief is correct.

(7) Grouping of Claims

Appellant's brief includes a statement that claims 1,3,5,6,8,10 and 11 do not stand or fall together and provides reasons as set forth in 37 CFR 1.192(c)(7) and (c)(8).

(8) ClaimsAppealed

A substantially correct copy of appealed claims 1-10 appears on page I, ii of the Appendix to the appellant's brief. The minor errors are as follows: claim 11 is missing

(9) Prior Art of Record

The following is a listing of the prior art of record relied upon in the rejection of claims under appeal.

5,432,814

Hasegawa

6-1995

(10) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 102

A person shall be entitled to a patent unless --

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371 of this title before the invention thereof by the applicant for patent.

1. Claims 1,3,8,10-11 are rejected under 35 U.S.C. 102(e) as being anticipated by Hasegawa (5,432,814).

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Hasegawa discloses a spread spectrum communication system comprising : the steps of storing Plurality of P.N. code sequences (PN1-PNK); (PN1-PNK) are a set of P.N. code sequences; assigning (the set) the plurality of the P.N. code sequences (PN1-PNK) to a single (first) transmitter; spreading the information signal for the first transmitter with the P.N. code contained within the plurality of the P.N. codes assigned to the (single) transmitter (4) and despreading the information signal using the P.N. code sequences.(see figs.1 and 2).

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 5-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hasegawa.

Hasegawa discloses all the subject matters substantially as claimed (see paragraph 3 above).

Hasegawa differs from the present invention in that he describes his invention in terms of one single transmitter and receiver. However, it would have been obvious to one of ordinary skill in the art at the time the invention was made to add a second transmitter and receiver(similar to the first transmitter and receiver described above on paragraph 1 of Hasegawa) in the system of Hasegawa since there is no new or unexpected result.

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(II) Response to Argument

Appellant argues that the examiner inappropriately made the second office action final. However, examiner disagree with appellant, because the present amended claims are broader than the previous claims. It is proper for the examiner to make the office action final because:

- I) the claims are amended (necessitated by amendment).
- ii) the present claims are broader than the previous claims forcing the examiner to do more search or use other prior art which were not considered before .

Appellant also argues that the examiner failed to establish a *prima facie* showing anticipation(Hasegawa). However, examiner disagree with appellant because examiner did show and explained in detail why Hasegawa anticipate the claimed invention. (**Here examiner's interpretations of codebook is a book or set containing a list of expressions with their code group equivalents.** Here the list of expressions are P.N. codes).

Hasegawa shows *storing a table of P.N. codes PN1-PNK (inherent); a set containing a P.N. code (PN1-PNK)* (A code book containing a P.N. codes); *assigning the set (PN1-PNK) to the first transmitter* (assigning a first code book to the first user) and *spreading the information signal (5) with the first PN1-PNK code sequence contained in the set (4)* (spreading the information with the first P.N. code contained within the codebook). Appellant also argues that the P.N. code of Hasegawa are not determined based on the content or value of the information being sent. However, such particular limitation is claimed in claims 2,4,7 and 9 and those claims are indicated as allowable claims.

In response to the rejection of claims 1,3,5,6,8,10-11 under 35 USC 103 on Crepsco et al. Examiner agrees with appellant and the rejection is withdrawn.

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For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

T.Ghebretinsae

6/12/02

TEMESGHEN GHEBRETTINSAE
PRIMARY EXAMINER

Conferees

Don Vo

DON N. VO
PRIMARY EXAMINER

Chi Pham

Chi Pham

CHI PHAM
SUPERVISORY PATENT EXAMINER

Blakely, Sokoloff, Taylor & Zafman TECHNOLOGY CENTER 2600

12400 Wilshire Blvd.

Seventh floor

Los Angeles, CA 90025-1026.